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Universal Service Administrative Company

Christy Doleshai
Associate Manager-
Revenue Administration

August 28, 2002

Business Discount Plan, Inc.
One World Trade Center
Suite 800
Long Beach, CA 90831

Fila499 ID: 814329

Attn: Allison Bloom

RE: September 1, 1999 FCC Form 499-S Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised PCC Form 499-S that you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for the period January 1 - June 30, 1999. Based on the information provided, we are unable to accept the revision because it was not filed by January 31, 2000.

The April 1, 2000 FCC Form 499-A which reported January 1 - December 31, 1999 revenue will true up any errors that were made on the 499-S filing. Therefore, there is no need to submit a revised 499-S filing.

Please feel free to contact the Form 499 Help Line at 973-560-4460 or via e-mail at Form499@neca.org with any questions.

Thank you,

E



Universal Service Administrative Company

August 28, 2002

Business Discount Plan, Inc.
One World Trade Center
Suite 800
Long Beach, CA 90831

Filer 499 ID: 814239

Attn: Gene Guerry

RE: Form 499-A Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-A that you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for the period January 1 - December 31, 2000. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.

USAC recognizes that you may disagree with our decision **If you wish to file an appeal, your appeal must be received no later than 60 days after the date of this letter.**

In the event that you choose to appeal the decision, you should follow these guidelines:

- **Write** a "Letter of Appeal to USAC" explaining why you disagree with this Revised Form 499-A Rejection letter and identify the outcome that you request;
- **Mail** your letter to:
Letter of Appeal
USAC
2120 L Street, NW, Suite 600
Washington, DC 20037
- Appeals submitted by fax, telephone call, and e-mail **will not** be processed.
- Provide necessary contact information. Please list the name, address, telephone number, fax number, and e-mail address (if available) of the person who can most readily discuss this appeal with USAC.
- Identify the "Legal Reporting Name" and "Filer 499 ID."

- Explain the appeal to the USAC. Please provide documentation to support your appeal.
- Attach a photocopy of this Revised Form 499-A Rejection decision that you are appealing.

USAC will review all "letters of appeal" and respond in writing within 90 days of receipt thereof.

The response will indicate whether USAC

- (1) agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 499-A Rejection Letter; or
- (2) disagrees with your letter of appeal, and the reasons therefor.

If you disagree with the USAC response to your "letter of appeal," you may file an appeal with the FCC within 60 days of the date USAC issued its decision in response to your "Letter of Appeal." The FCC address where you may direct your appeal is:

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC, "Docket Nos. 96-45 and 97-21."

In the alternative, you may write and send an appeal letter directly to the Federal Communications Commission (FCC), and bypass USAC. Your letter of appeal to the FCC must explain why you disagree with the USAC decision. You are also encouraged to submit any documentation that supports your appeal. The FCC rules governing the appeals process (Part 54 of Title 47 of the Code of Federal Regulations 54.719 – 54.725) are available on the FCC web site (www.fcc.gov).

If you have questions or concerns regarding this letter, please contact Lisa Tubbs at (973) 884-8116 or Christy Doleshal at (973) 560-4426.

Sincerely,

USAC



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Universal Service Administrative Company

August 28, 2002

Business Discount Plan, Inc.
One World Trade Center
Suite 800
Long Beach, CA 90831

Filer 499 ID: 814239

Attn: Gene Query

RE: Form 499-A Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the ~~Revised~~ FCC Form 499-A *that* you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for the period January 1 – December 31, 1999. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.

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Sincerely,

USAC

G



Universal Service Administrative Company

August 28, 2002

Business Discount Plan, Inc.
One World Trade Center
Suite 800
Long Beach, CA 90831

Filer 499 ID: 814329

Attn: Allison Bloom

RE: Form 457 Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 457 that you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for the period January 1 – December 31, 1998. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.

USAC recognizes that you may disagree with our decision. **If you wish to file an appeal, your appeal must be received no later than 60 days after the date of this letter.**

In the event that you choose to appeal the decision, you should follow these guidelines:

- Write a "Letter of Appeal to USAC" explaining why you disagree with this Revised Form 457 Rejection letter and identify the outcome that you request;
- Mail your letter to:
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USAC
2120 L Street, NW, Suite 600
Washington, DC 20037
- Appeals submitted by fax, telephone call, and e-mail will not be processed.
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- Identify the "Legal Reporting Name" and "Filer 499 ID."

- **Explain the appeal to the USAC.** Please provide documentation to support your appeal.
- **Attach a photocopy of this Revised Form 457 Rejection decision** that you are **appealing.**

USAC will review all **“letters of appeal”** and **respond in writing within 90 days of receipt thereof.**

The response will indicate whether USAC:

- (1) **agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 457 Rejection Letter; or**
- (2) **disagrees with your letter of appeal, and the reasons therefor.**

If you disagree with the USAC response to your **“letter of appeal,”** you may **file an appeal with the FCC within 60 days of the date USAC issued its decision in response to your “Letter of Appeal.”** The FCC address where you may direct your **appeal is:**

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office of the Secretary
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Sincerely,

USAC



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LottnerRubinFishmanBrown+Saul, P.C.
Attorneys

633 17th Street, Suite 2700 Denver, CO 80202-3635
303.292.1200 Fax: 303.292.1300

MICHAEL L. GLASER
(303)383-7610
mglaser@lrflgal.com

October 23, 2002

VIA FEDERAL EXPRESS

Letter of Appeal
Universal Service Administration Company
2120 L Street N.W., Suite 600
Washington, D.C. 20037

Re: Business Discount Plan, Inc., Filer 499ID:814329
Your Decision of August 28, 2002

Gentlemen:

The undersigned counsel represent Business Discount Plan, Inc. ("BDP"), One World Trade Center, Suite 800, Long Beach, California 90831.

BDP hereby appeals the **six** (6) Universal Service Administration Co. ("USAC") Decisions, dated August 28, 2002 (the "**August**28 Decisions"), rejecting BDP's reports on revised FCC Form 457, 499-S, 499-A and 499-Q, for the period January 1-December 31, 1998 (FCC Form 457), January 1-June 30, 1999 and January 1-December 31, 1999 (FCC Form 499-A), January 1-December 31, 2000 (FCC Form 499-A), January 1-December 31, 2000 (Form 499-A), and quarterly filings made on May 11 and November 11, 2001, and February 1, 2002, for the periods **January** 1-March 31, July 1-September 30, and October 1-December **31**, 2001 (FCC Form 499 Q). Copies of USAC's Decisions which BDP appeals are attached to **this** Letter of Appeal as Exhibit 1-6.

Letter of Appeal
Universal Service Administration Company
October 23, 2002
Page 2

I. INTRODUCTION

USAC's Decisions refusing to accept BDP's revisions to its revenue reports for the-years indicated above are based upon USAC's contention that the revisions were not filed within one year of the original submission (Exhibits 1-3), or are not timely or not filed prior to the revision deadlines (Exhibits 4-6).

The Decisions are arbitrary and capricious and an abuse of USAC's discretion. There is no provision either in the Communications Act of 1934, **as** amended, 47 U.S.C. § 151, et seq., or the rules and regulations **of** the Federal Communication Commission ("FCC") governing Universal Service, 47 CFR Part **54**, requiring that BDP **file** revisions to revenues reported for the purposes **of** calculating contributions within one year of BDP's original submissions, or by any certain time **deadline**. BDP, therefore, requests that USAC reverse the Decisions, accept BDP's revised FCC Forms 457, 499-A, 499-S and 499-Q for the years indicated above, and issue BDP a refund for the overpayments.

11. FACTS

BDP timely filed its FCC Forms 457, 499-A, 499-S and 499-Q with accompanying worksheets (Telecommunications Reporting Worksheet) **reporting** its revenues for the years ended December 31, 1998, December 31, 1999, December 31, 2000, and December 31, 2001. On August 5, 2002, BDP filed amended FCC Forms for the years indicated above, **only** after having just discovered that, through an audit conducted by BDP's independent auditors, BDP

Letter of Appeal
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October 23, 2002
Page 3

overstated its revenues and had overpaid the USAC by \$1,016,738.43. In filing its revised reports, BDP explained BDP's original reports had significantly overstated BDP's gross revenues for the periods, because they were based upon incorrect gross revenue information supplied to BDP by Billing Information Concepts, Inc. ("BIC"), BDP's billing aggregator responsible for the billing and management of BDP's long distance service. After BDP's independent auditors completed an audit of BDP's unrelated excise and sales ~~tax~~ for the years in question in July 2002, BDP discovered that the revenue reports supplied to BDP by BIC for these years, did not appropriately reduce BDP revenue by deducting substantial adjustments and credits to BDP's customer billing. BDP included with its amended reports filed on August 5, 2002 an analysis of the exact amount owed for the years ending December 31, 1998, 1999, 2000, and 2001. See Exhibit 7.

III. USAC'S DECISIONS

USAC's Decisions rejected BDP's revised revenue reports because "they were not filed within one year of the original submission," (Exhibits 1-3) or "not filed prior to the revision deadlines." (Exhibits 4-6). USAC's Decisions, however, did not cite any statutory provision or **FCC** rule setting **forth** the requirement that **BDP's** revisions had to be submitted ~~within~~ one year ~~of~~ the original submission, ~~or~~ any revision deadline, except ~~for~~ a reference to the instructions for completing FCC Form 499-Q, **pertaining** to quarterly revenue reports for the year **2001**.

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October 23, 2002
Page 4

IV. USAC'S REJECTION OF BDP'S REVISED REVENUE REPORTS FOR THE YEARS ENDED DECEMBER 31, 1998, 1999, 2001 AND 2002 ARE ARBITRARY AND CAPRICIOUS AND AN ABUSE OF DISCRETION: THE DECISIONS SHOULD THEREFORE SHOULD BE REVERSED AND USAC SHOULD REFUND BDP THE AMOUNT OF OVERPAYMENTS

The Decisions are not supported by any statutory provision in the Communications Act of 1934, as amended (the "1934 Act"), or a rule or regulation of the FCC that governs the structure and operation of USAC and reporting requirements of contributors to Universal Service. Moreover, the USAC has no authority to establish a time period within which contributors must request a refund of overpayments. Thus, USAC's rejection of BDP's Revised Revenue Reports for the years ended December 31, 1998, 1999, 2000, and 2001 are arbitrary and capricious, and an abuse of discretion.

A. The Communications Act of 1934, as Amended, Does Not Set Forth Any Statute of Limitations for a Contributor's Revision to Its Revenue Reports to USAC.

In 1996, the Congress substantially amended the 1934 Act, by enactment of the Telecommunications Act of 1996 (the "1996 Act"). In the 1996 Act, Congress enacted Section 254, entitled "Universal Service." In this statutory provision, the Congress provided that every telecommunications carrier providing interstate communications must contribute on an equitable and non-discriminatory basis to a specific, predictable and sufficient mechanisms established by the FCC to preserve and advance universal service. 47 U.S.C. § 254(d). In Section 254, the Congress, however, did not specify any limitation on a telecommunications

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carrier's ability to seek a refund for **an** overpayment for universal service. Instead, the Congress left it to the Commission to formulate rules to implement Section **254**. While the **1934** Act contains time limitations as to bringing legal actions, the **1934** Act contains **no** time limitations applicable to contributors **seeking** refunds for overpayments for Universal Service. See **47 U.S.C. § 415**. **In** short, there is nothing in the **1934** Act that **limits** BDP may seek recovery of overpayments to USAC.

B. The FCC Promulgated Part 54 to Implement Section 254 of the Act, But Did Not Prescribe a Time Period for Seeking Refunds for Overpayments for Universal Service. Moreover, USAC Has No Authority to Establish Such a Time Period.

In implementing Section **254**, the FCC enacted **47 CFR Part 54**. **Part 54** of the Commission's rules sets forth specific rules for administration of the Universal Service. The FCC appointed USAC **as** a permanent administrator of the federal Universal Service support mechanisms. **47 U.S.C. § 54.702(a)**. FCC also specifically described the USAC's functions and abilities. **Thus, Part 54** specifically states:

“The Administrator **shall** be responsible for billing contributors, collecting contributions to Universal Support Mechanisms, and disbursing Universal Support Funds.”

47 CFR § 54.702(b).

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Universal Service Administration Company
October 23, 2002
Page 6

In addition, Part 54 states:

“The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission’s Rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”

47 CFR § 54.702(d).

Finally, Part 54 specifically requires contributors to file reports of revenues for purposes of determining the amount of payments for Universal Service, and directs USAC to refund overpayments. Thus, Part 54 provides:

“Once a contributor complies with a telecommunications reporting worksheet filing requirements, the Administrator may refund any overpayments made by the contributor, less any fees, interests or costs.”

47 CFR § 54.713.

There is no mention, however, in Part 54 of any time period within which a telecommunications carrier must file revised revenue reports and claim a refund. Instead, Part 54 only provides that USAC has the authority to refund overpayments. While USAC has this authority, USAC has been specifically instructed not to make policy, interpret unclear provisions of the 1934 Act, or interpret the intent of Congress. Since neither the 1934 Act nor Part 54 provides for a time limitation on a contributor’s ability to seek a refund, let alone address any

Letter of Appeal
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October 23, 2002
Page 7

limitation period, USAC may **not**, as it has d here, establish such a time p iod. In its Decisions, USAC has arbitrarily imposed a one-year limitation or other time period on BDP's ability to seek a refund for overpayments. Thus, USAC's Decisions are beyond its authority, and an abuse of its discretion.

The Decisions must therefor be reversed, and USAC must accept BDP's revision to its 1998, 1999, 2000 and 2002 revenue reports, and refund BDP's overpayment of a net \$1,016,738.43 to USAC for Universal Service.

C. USAC's Reliance on Instructions to Complete Report Forms is Misplaced.

USAC has asserted in its Decisions pertaining to BDP's revised report for the year ended December 31, 2000, that BDP's revisions were "not filed prior to the revision deadlines." USAC states that ~~this~~ limitation appears ~~on~~ page 8 of the instructions for relevant FCC Form 499-Q, and therefore, BDP is bound to this time period. For several reasons, USAC cannot legitimately rely ~~on~~ the instructions to FCC Form 499-Q, ~~as~~ establishing a limitation on the **period within** which BDP may seek a refund for overpayment to the Universal Service. **First**, the ~~instructions~~ do not constitute an FCC rule because they were never subject to notice and comment ~~as~~ required under the Administrative Procedures Act, 5 U.S.C. 552. **Thus**, BDP (or, indeed, any other contributor to any mechanism administered by USAC) ~~never~~ had prior notice of ~~this~~ limitation or an opportunity to comment ~~on~~ any proposed time limitation on the filing of revised reports seeking refunds for overpayments. Accordingly, BDP's ~~Fifth~~ Amendment due process right would be

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Page 8

violated if USAC were permitted to maintain that the instructions to FCC Form 499-Q constitute a rule of the FCC establishing a limitation period within which BDP may seek a refund of an overpayment to the fund.

Furthermore, USAC's reliance on the instruction to the worksheet for the year 2001 is as equally as arbitrary and capricious and an abuse of discretion as USAC's action in denying BDP's revised revenue reports for the years ending December 31, 1998, 1999 and 2000, because USAC fails to set forth the basis for such reliance. As BDP shows above, there is no statutory provision or FCC rule that specifies any limitation period for seeking refunds for overpayments to USAC; and USAC has no authority to establish a limitation period.

Secondly, the instructions applicable to the worksheets for the years 1998-2000, do not mandate that a contributor file a revised worksheet in any time period. In fact, the instructions to the telecommunications worksheet for these years only state that a contributor must file the revised worksheet if it discovers an error in the data that it reports. The instructions specify no time period for filing a revised report requesting a refund. Finally, while the instructions for completing the worksheet for the year 2001 refer to a revision deadline, these instructions are not binding on BDP, as stated above, because BDP had no notice that the deadline would be imposed or an opportunity to comment before the instructions were published.

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Page 9

V. RELIEF REQUESTED

Accordingly, USAC's decision to reject BDP's refund requests are arbitrary and capricious, **and** must be overturned. USAC should accept BDP's revised 499 filings **for** the years 1998, 1999, 2000 and 2001, and refund BDP the **amounts** due for each **of** these years which totals \$1,016,738.43.

Respectfully submitted,

LOTTNER RUBIN FISHMAN BROWN & SAUL, P.C.

By: Michael L. Glaser
Michael L. Glaser
Michael D. Murphy

MLG/jrl
Encs.



Universal Service Administrative Company

August 28, 2002

Business Discount Plan, Inc.
One World Trade Center
Suite 800
Long Beach, CA 90831

Filer 499 ID: 814329

Attn: Allison Bloom

RE: *Form 457* Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 457 that you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for the period January 1 –December 31, 1998. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.

USAC recognizes that you may disagree with our decision. **If you wish to file an appeal, your appeal must be received no later than 60 days after the date of this letter.**

In the event that you choose to appeal the decision, you should follow these guidelines:

- Write a "Letter of Appeal to USAC" explaining why you disagree with this Revised Form 457 Rejection letter and identify the outcome that you request;
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- Identify the "Legal Reporting Name" and "Filer 499 ID."

- Explain the appeal to the USAC. Please provide documentation to support your appeal.
- Attach a photocopy of this Raised Form 457 Rejection decision that you are appealing.

USAC will review all "letters of appeal" and respond in writing within 90 days of receipt thereof.

The response will indicate whether USAC

- (1) agrees with your letter of appeal, and approves an outcome that is *different* from the Revised Form 457 Rejection Letter. or
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Please be sure to indicate the following information on all communications with the FCC:
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If you have questions or concerns regarding this letter, please contact Lisa Tubbs at (973) 884-8116 or Christy Doleshal (973) 560-4426.

Sincerely,

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Universal Service Administrative Company

August 28, 2002

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Attn: Gene Query

RE: Form 499-A Revision Rejection

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If you have questions or concerns *regarding* this letter, please contact Lisa Tubbs at (973) 884-8116 or Christy Doleshal at (973) 560-4426.

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USAC



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August 28, 2002

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One World Trade Center
Suite 800
Long Beach, CA 90831

Filer 499 ID: 814329

Attn: Allison Bloom

RE 5/11/01, 11/01/01, 02/01/02 Form 499-Q Revision Rejections

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-Q that you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for the periods of January 1 – March 31, July 1 – September 30, 2001 and October 1 – December 31, 2001. Please note that your April 1, 2002 Form 499-A submission reporting January 1 through December 31, 2001 revenue will true-up your company's May 11, 2001, August 1, 2001, November 1, 2001 and February 1, 2002 quarterly Form 4994 reports. However, based on the information provided, we are unable to accept the Form 499-Q revision because it was not filed prior to the revision deadlines. Per FCC Form 499-Q instructions on page 8, "revised filings must be made by the filing date for the subsequent 499 filing."

USAC recognizes that you may disagree with our decision. If you wish to We an appeal, your appeal must be received no later than 60 days after the date of this letter.

In the event that you choose to appeal the decision, you should follow these guidelines:

- Write a "Letter of Appeal to USAC" explaining why you disagree with this Revised Form 4994 Rejection letter and identify the outcome that you request;
- Mail your letter to:
Letter of Appeal
USAC
2120 L Street, NW, Suite 600
Washington, DC 20037
- Appeals submitted by fax, telephone call, and email will not be processed.

- Provide necessary contact information. Please list the name, address, telephone number, fax number, and e-mail address (if available) of the person who can most readily discuss this appeal with USAC.
- Identify the "Legal Reporting Name" and "Filer 499 ID."
- Explain the appeal to the USAC. Please provide documentation to support your appeal.
- Attach a photocopy of this Revised Form 499-4 Rejection decision that you are appealing.

USAC will review all "letters of appeal" and respond in writing within 90 days of receipt thereof.

The response will indicate whether USAC

- (1) agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 499-Q Rejection Letter; or
- (2) disagrees with your letter of appeal, and the reasons therefor.

If you disagree with the USAC response to your "letter of appeal," you may file an appeal with the FCC within 60 days of the date USAC issued its decision in response to your "Letter of Appeal." The FCC address where you may direct your appeal is:

Federal Communications Commission
Office of the Secretary
445 12th street, SW
Room TW-A325
Washington, DC 20554

please be sure to indicate the following information in all communications with the FCC:
"Docket Nos .96-45 and 97-21."

In the alternative, you may write and send an appeal letter directly to the Federal Communications Commission (FCC), and bypass USAC. Your letter of appeal to the FCC must explain why you disagree with the USAC decision. You are also encouraged to submit any documentation that supports your appeal. The FCC rules governing the appeals process (Part 54 of Title 47 of the Code of Federal Regulations 54.719 - 54.725) are available on the FCC web site (www.fcc.gov).

If you have questions or concerns regarding this letter, please contact Lisa Tubbs at (973) 884-8116 or Christy Doleshal at (973) 560-4428.

Sincerely,

USAC



Universal Service Administrative Company

Christy Dolashal
Associate Manager-
Revenue Administration

August 28, 2002

Business Discount Plan, Inc.
One World Trade Center
suite 800
Long Beach, CA 90831

Filer 499 ID: 814329

Attn: Allison Bloom

R E September 1, 1999 FCC Form 499-S Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-S that you *submitted* for the purpose of revising revenue reported by Business Discount Plan, Inc. for the period January 1 - June 30, 1999. Based on the information provided, we are unable to accept the revision because it ~~was~~ not filed by January 31, 2000.

The April 1, 2000 FCC Form 499-A which reported January 1 - December 31, 1999 revenue will true up any errors that were made on the 499-S filing. Therefore, there is no need to submit a revised 499-S filing.

Please feel free to contact the Form 499 Help Line at 973-560-4460 or via e-mail at Form499@neca.org with any questions.

Thank you,



Universal Service Administrative Company

Christy Dolehal
Associate Manager
Revenue Administration

August 28, 2002

Business Discount Plan, Inc.
One World Trade Center
Suite 800
Long Beach, CA 90831

Filer 499 ID: 814329

Attn: Allison Bloom

RE: September 1, 2000 FCC Form 499-S Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-S that you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for the period January 1 - June 30, 2000. Based on the information provided, we are unable to accept the revision because it was not filed by January 31, 2001.

The April 1, 2001 FCC Form 499-A which reported January 1 - December 31, 2000 revenue will true up any errors that were made on the 499-S filing. Therefore, there is no need to submit a revised 499-S filing.

Please feel free to contact the Form 499 Help Line at 973-560-4460 or via e-mail at Form499@ncca.org with any questions.

Thank you,



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Universal Service Administrative Company

Administrator's Decision on Contributor Appeal

STK DENVER
RECEIVED

JAN 03 2003

December 31, 2002

BY FEDERAL EXPRESS

Michael L. Glaser
Shughard Thomson & Kilroy, P.C.
1050 17th Street, Suite 2300
Denver, CO 80265

Re: Business Discount Plan, Inc. (ID # 814329)

Dear Mr. Glaser:

After thorough review, the Universal Service Administrative Company (USAC) has completed its evaluation of the letter of appeal submitted on behalf of Business Discount Plan, Inc. (BDP) dated October 23, 2002 (Appeal). BDP's Appeal requests that USAC accept BDP's late-filed FCC Forms 457, 4993, 499-A and 499-Q reporting telecommunications revenue for the **periods** January 1-December 31, 1998, January 1 – June 30, 1999, January 1 – June 30, 2000, January 1 – December 31, 1999, January 1 – December 31, 2000, January 1 – March 31, July 1 – September 30, 2001, and October 1 – December 31, 2001 (collectively referred to as FCC Worksheets), respectively.

Background

BDP ~~has~~ requested that USAC accept late-filed FCC Worksheets reporting revenue periods for which the one year deadline for revised submissions ~~has~~ passed. **BDP asserts** ~~that~~ the revenue reported on the original FCC Worksheets was incorrectly provided by its billing aggregator. Further, BDP asserts that there is **no deadline** for filing established by FCC regulations and that USAC ~~cannot~~ lawfully rely on a ~~deadline~~ posted in instructions that ~~accompany~~ the FCC Worksheets

Discussion:

The FCC Worksheets and accompanying instructions which BDP attempted to revise were reviewed and approved by the FCC. FCC regulations in force during the relevant time period required carriers to file FCC Worksheets (FCC Form 499 or, previously, FCC Form 457) and required USAC to bill contributors based on reported revenues. *See generally* 47 C.F.R. Part 54. FCC regulations do not require USAC to accept any late-filed revised FCC Worksheets. However, in order to improve the accuracy of the revenue reported, the USAC Board of Directors **has** authorized staff to allow carriers to file new or revised worksheets after the original due date. Since September 1, 1999, USAC has allowed carriers to file new or revised FCC Worksheets after the original due date and for a period limited up to 12 months from the initial due date of the worksheet in question.

Because BDP's revised FCC Worksheets identified on the chart below were submitted after the original due date and beyond USAC's one year deadline for filing of revisions, they were rejected.

| FCC Form | Due Date | Date Revisions Submitted |
|----------------|-------------------|--------------------------|
| FCC Form 457 | March 31, 1999 | August 12, 2002 |
| FCC Form 499-S | September 1, 1999 | August 12, 2002 |
| FCC Form 499-S | September 1, 2000 | August 12, 2002 |
| FCC Form 499-A | April 1, 2000 | August 12, 2002 |
| FCC Form 499-A | April 1, 2001 | August 12, 2002 |
| FCC Form 499-Q | May 11, 2001 | August 12, 2002 |
| FCC Form 499-Q | November 1, 2001 | August 12, 2002 |
| FCC Form 499-Q | February 1, 2002 | August 12, 2000 |

USAC properly rejected all forms submitted by BDP as untimely. However, BDP had the opportunity to correct the revenue data contained in the three most recent FCC Forms 499-4 set forth above at the time BDP filed its FCC Form 499-A covering 2001 annual revenue. BDP in fact, submitted revenue data on its FCC Form 499-A reporting 2001 annual revenue, which was timely filed on April 26, 2002. As provided in the FCC's *Quarterly Reporting Order*,¹ annual revenue information from the Form 499-A will be used to ensure that contributions for the entire year are based on all subject revenues for the year. Therefore, the FCC Form 499-A submitted by BDP on April 26, 2002 properly revised the revenue reported on BDP's Forms 499-4 reporting 1st, 3rd, and 4th quarter 2001 revenue as set forth in the chart above.

Decision on Appeal: Denied in part; Dismissed as Moot in part.

USAC hereby denies in part and dismisses as moot in part BDP's Appeal.

¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 9645, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (rel. Mar. 14, 2001) (*Quarterly Reporting Order*).

Michael L. Glaser
Business Discount Plan, Inc
December 31, 2002
Page 3

If you disagree with the USAC response to your Letter of Appeal, you may file an appeal with the Federal Communications Commission (FCC) within 60 days of the date of *this* letter. The FCC address where you may direct your appeal is:

Federal Communications Commission
Office of the Secretary
445 12th Street, **SW**
Room TW-A325
Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC:
"Docket Nos. 96-45 and 97-21."

Sincerely,

USAC

Universal Service Administrative Company

cc: *Anita* Cheng, FCC Common Carrier **Bureau**
James Shook, FCC Enforcement **Bureau**